IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:22.10.2007

CORAM:

THE HON'BLE MR.JUSTICE M.CHOCKALINGAM

W.P.NO.30330 OF 2006
AND
M.P.NOS.1 OF 2006 AND 1 OF 2007

N.Nagarajan ...Petitioner

Vs.

1.State of Tamil Nadu rep. by
its Secretary to Government,
Home (Police) Department,
Secretariat, Chennai-9.

2. Director General of Police,
Chennai-4. ...Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus as stated within.

For Petitioner : Mr.S.Mani
For Respondents : Mr.M.Dhandapani
Additional Government Pleader

O R D E R

Seeking to issue a writ of Certiorarified Mandamus to quash the order passed by the second respondent made in Rc.No.100478/NGB-IV(1)/2001 dated 25.8.2001 and the consequential order passed by the first respondent in Letter No.29819/Police.III/2006-3, Home (Police III) Department, dated 23.5.2006 and further to issue a direction to the respondents to regularize the services of the petitioner in the cadre of Sub Inspector of Police with effect from 10.9.1986 and to give due seniority and further promotion as Inspector of Police and confer all the consequential benefits.

2. Affidavit filed in support of the petition is perused.

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3.The Court heard the learned counsel on either side.

4. The case of the petitioner, who seeks the relief, in short, is that he joined service in Tamil Nadu Police Services as Grade II Constable in the year 1971 and thereafter he was promoted as Grade I Police Constable in 1973 and further as Sub Inspector of Police on 2.9.1986 on out of seniority basis and joined on 10.9.1986. The said promotion was given in the regular vacancy and he has earned about 260 awards to his credit. His services were regularized from 21.2.1995 by memorandum dated 20.7.1996. Though the petitioner was promoted as Sub Inspector of Police on out of seniority basis on 10.9.1986, his services were regularised only from 1.2.1995 long after the period of ten years depriving him to continue as Sub Inspector of Police since 1986 and also as a consequence of deprivation of ten years of service, his further promotional opportunity was also delayed. The direct recruits of 1987 batch were included in the Panel of Sub Inspector of Police fit for promotion to the post of Inspector of Police for the year 1996-97. Thus, the 1987 batch has been given upper birth, while he has been discharging his duties sincerely as Sub Inspector of Police. His regularization from 21.2.1995, after the period of nine years, has deprived him of the promotion also. Due to the administrative delay, the service benefits of nine years were denied to the petitioner, even though he was virtually worked since 10-9-1986. His continuous service cannot be deprived. Under such circumstances, on the ground of denial of retrospective regularization, the petitioner filed Original Application before the Administrative Tribunal in O.A.No.6299 of 2001. Since there was no Presiding Officer, the petitioner filed writ petition before this Court seeking to transfer the above Original Application and the same has been transferred and numbered as W.P.No.31914 of 2005. This Court by order dated 25.8.2001 directed the petitioner to make a representation to the Government for retrospective regularization within a period of four weeks from the date of receipt of a copy of that order and the same has to be disposed off by the Government within a period of eight weeks from the date of receipt of representation. Accordingly, the petitioner made a representation for retrospective regularization on 22.3.2006 and the Government passed the impugned order dated 23.5.2006 whereby rejecting his representation and a consequential order has also been passed by the first respondent. Under such circumstances, the petitioner was constrained to file the above writ petition before this Court.

5. Advancing his arguments on behalf of the petitioner, learned counsel for the petitioner would submit that the petitioner has joined service as Grade II Police Constable in the year 1971 and thereafter he was promoted as Grade I Police

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Constable in 1973 and further as Head Constable in 1982. He was further promoted on out of seniority basis in the year 1986 as Sub Inspector of Police and he was worked so. But, he has been regularized only from 21.2.1995 after a decade and under such circumstances, he is entitled to have regularization from the date when he was working as Sub Inspector of Police and in a given case like this, number of petitions were filed before the Tribunal viz.,O.A.No. 1565 of 1995 and other cases. An order came to be passed on 30.11.1995 whereby a direction has been issued to the State to regularize the services of the police personnel, who have been actually put in service and also issued a direction for promotion. While passing the order, the Tribunal has also ordered that the Head Constables, who have been acting as Sub Inspectors of police for a period of six years and above as on the date of the memorandum, without any black mark or without any punishments whatsoever, should be regularized as Sub Inspectors of Police and seniority should be fixed according to the rules and pursuant to the order, the petitioner made an application for regularization earlier when he was working as Sub Inspector of Police. Since the original Application could not be disposed of by the Tribunal, the petitioner was compelled to file a writ petition before this Court. While there was a direction, permission was given to him to file a representation and the Government, while disposing of the representation, without assigning any reason whatsoever, have rejected the same. The earlier order of the Tribunal made in the year 1995 should be given effect to in its letter and spirit. If done so, the petitioner, who was acting as Sub Inspector of police for more than six years, should have been promoted and regularized as Sub Inspector of Police from the date on which he was actually worked; but it was not done so. Learned counsel for the petitioner, in support of his contention, relied on two decisions of this Court and further submitted that in both the cases, this Court issued directions that the Department should strictly follow the orders of the Original application, wherein the department has also followed. Under such circumstances, the same benefit should be given to the petitioner retrospectively and hence this writ petition has got to be ordered.

6. The Court heard the learned counsel for the respondent on the above contentions.

7. Learned counsel for the respondent, in short, would submit that it is true that in the original application before the Tribunal, there was a direction given to the State that the Head Constables, who were acting as Sub Inspectors of police for more than six years, should be regularized as Sub Inspectors of Police and seniority should be fixed according to the rules. But, no where, the Tribunal has stated that while regularization is given, it should be given retrospectively and even while passing orders,

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this Court, nowhere, has ordered to give regularization and to fix the seniority retrospectively. In the instant case, the petitioner has been regularized from 21.2.1995 and thus taking into consideration and following the judgment, regularization has been made. Learned counsel for the respondents would further add that it is not correct to state that the representation of the petitioner has been rejected, without assigning proper reasons. A reading of the order of rejection by the respondent authority would indicate that the representation has been considered and all the candidates who were equally placed have been given seniority and has been regularized from 21.2.1995 and while the similarly placed persons were regularized from 21.2.1995, the petitioner cannot have any grievance at all and hence the writ petition has got to be dismissed.

8. The Court paid its anxious consideration on the submission made.

9. It is an admitted fact that the petitioner who joined Service as Grade II Police Constable was promoted as Grade I Police Constable and further he was promoted as Head Constable from 1982 and on out of seniority basis, he was promoted as Sub Inspector of Police from 2.9.1986, but his services were regularized only from February 1995. According to the petitioner, if regularization has not been made from the time when he was so acting as Sub Inspector of Police, i.e. from September 1986, he would loose his seniority and promotion and hence, there should be a direction to the Department to regularize his services from September, 1986. It is not in controversy that similarly placed persons have filed Original Applications before the Tribunal and the Tribunal has also issued various directions to the Department to regularize their services and one of the direction was that if the Head Constables who were working as Sub Inspectors of Police for more than six years and above as on the date of impugned memorandum, without any black mark or without any punishment whatsoever, shall be regularized as Sub Inspectors of Police. In the instant case, it is not in controversy that the services of the petitioner has been regularized from February 1995 as Sub Inspector Police. At this juncture, it is pertinent to point out that from a reading of the order of the Tribunal, it is clear that no where it is stated that regularization should be given with retrospective effect. It is also the submission of the petitioner that similarly placed persons have also been given regularization, pursuant to the orders of the Tribunal and also from the date subsequently thereto. If the services of the petitioner has got to be regularized from September, 1986 onwards, the services of thousands and thousands of police personnel, who were equally placed like the petitioner and whose services have been regularized pursuant to the orders of the Tribunal have got to be

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thoroughly changed and once so long as the petitioner is unable to show that the order of Tribunal was to the effect that regularization has to be given retrospectively, no question of considering the regularization afresh. Even in the orders rendered by this Court and relied on by the learned counsel, no where it is stated that regularization should be given retrospectively. It would be indicative of the fact that the order of the Tribunal has got to be strictly followed, so long as the petitioner rests his case on the order of the Administrative Tribunal, this Court is afraid as to whether the regularization could be ordered from September 1986; but his services have been regularized from February, 1995 to which he is entitled to. Apart from this, it cannot be commented that the order of rejection of representation of the petitioner by the respondent department cannot be without reasons. It is also clearly made out that similarly placed police personnel were given regularization pursuant to the orders of the Tribunal. Hence this Court is of the considered opinion that no case is made out for regularizing the services of the petitioner from September, 1986 onwards and therefore, the writ petition requires only an order of dismissal and accordingly, it is dismissed. No costs. Consequently, M.P.Nos.1 of 2006 and 1 of 2007 are also dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

VJY

To

1 The Secretary to Government,
Home (Police) Department,
Secretariat, Chennai-9.

2. Director General of Police,
Chennai-4.

1 CC TO Mr.S. Mani, Advocate, Sr. 63752
1 cc to the Government Pleader, sr. 63604

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